IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 495 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAIN VINODKUMAR HARDAS

Versus

STATE OF GUJARAT

Appearance:

MR RJ GOSWAMI for Petitioner No. 1-2

MR DP JOSHI, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 28/06/2001

ORAL JUDGEMENT

#. In this revision, the order of the Special Judge, Mehsana passed on 15-9-2000 is under challenge. Shri RJ Goswami, learned counsel for the revisionist and Shri DP Joshi, learned APP representing the respondent no.1 have been heard.

#. The two revisionists are facing trial under secs.3 and 7 of the Essential Commodities Act. They moved an application under sec.227 of the Code of Criminal Procedure on 15-5-2000 for being discharged, inasmuch as, according to them there is no material against them, on which they can be tried and proceeded under secs.3 and 7 of the Essential Commodities Act. This application was rejected by the Special Judge through a slipshod order, which is a non-speaking order. It is also illegal order, which is contrary to the provisions of sec.227 of the Code of Criminal Procedure. What has been mentioned in the impugned order is that, the request of accused nos.5 and 6 for discharge can not be accepted because, the question whether the offence under secs.3 and 7 of the Essential Commodities Act has been committed by them or not, can be decided after recording the evidence and looking to the case against the accused nos.5 and 6. This observation of the Special Judge clearly speaks that he had no idea of sec.227 of the Criminal Procedure Code, which provides that, 'if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

#. Sec.227 of the Code of Criminal Procedure Code does not contemplate recording of oral evidence, which is yet to be produced by the prosecution. What is mandatory in sec.227 of the Code of Criminal Procedure is that, a Sessions Judge, after considering the record of the case and the documents submitted by the prosecution and after hearing the submissions of the accused and the prosecution, finds that there is no sufficient ground for proceeding against the accused, he shall discharge him. It does not speak that there should be sufficient evidence for proceeding against the accused. As such, the question of recording evidence at the stage of sec.227 of the Code of Criminal Procedure is certainly a requirement which is contrary to the provision of sec.227 of the Code of Criminal Procedure. The application of the accused nos.5 and 6 for discharge under sec.227 of the Code of Criminal Procedure has not been decided on merits. The Special Judge should have considered the entire material on record, and after hearing the prosecution and the defence, should have passed order as contemplated under sec.227 of the Code of Criminal Procedure. Since this has not been done, there is no option but to set aside the impugned order after allowing the revision. There is also no other alternative but to

remand the matter to the Special Judge, Mehsana, who shall, after hearing the prosecution and the revisionists and their counsel, shall pass appropriate order on their application under sec.227 of the Code of Criminal Procedure.

#. With this direction, the revision is allowed and the matter is remanded for fresh disposal of application under sec.227 of the Code of Criminal Procedure in accordance with law and also in the light of observations made in the body of the judgment. Interim relief is vacated.

June 28, 2001. (D.C. Srivastava, J.)

/sakkaf